

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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NStar Electric Standby Rate Tariffs)	D.T.E. 03-121
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PETITION OF FUELCELL ENERGY, INC. FOR LEAVE TO INTERVENE

Pursuant to the Notice issued by the Department of Telecommunications and Energy (“Department”) in the above-captioned docket on January 20, 2004, and pursuant to G.L. c. 30A, § 10 and the rules of procedure found at 220 C.M.R. 1.03(1), FuelCell Energy, Inc. (“FCE”) hereby petitions for leave to intervene in this proceeding.

In support of this Petition, FCE states the following:

1. FCE is a publicly traded corporation with a principal place of business at 3 Great Pasture Road, Danbury, CT 06813.
2. All correspondence concerning this Petition in this matter should be directed to:

Adam P. Kahn
Anne Sterman
Foley Hoag LLP
155 Seaport Boulevard
Boston, MA 02210

3. FCE is a world leader in the development and manufacture of high temperature hydrogen fuel cells for clean electric power generation. FCE’s existing and/or target customers include hotels, hospitals, data centers, universities, wastewater treatment plants, public safety facilities, and other commercial, institutional and industrial facilities. FCE has installed commercial-scale fuel cells in the Commonwealth of Massachusetts.

4. FCE installations emit less air pollutants than any other commercially available fossil fuel fired source, including the fossil fuel fired sources that supply the utilities and all

conventional sources of distributed energy. FCE installations have also been designed to operate on renewable fuels, such as landfill gas and digester gas. Apart from the minimal air emissions, the only other by-product of fuel cell operation is water.

5. In this docket, Boston Edison Company, Cambridge Electric Light Company, and Commonwealth Electric Company d/b/a NSTAR Electric (collectively, “NSTAR” or the “Company”) submitted for approval by the Department tariffs designed to establish standby rates for certain customers who have their own on-site, self-generation facilities (“DG Facilities”).

6. It appears that the tariffs as proposed will, in fact, create inappropriate cross-subsidies at the expense of DG Facilities, send inappropriate price signals, and will consequently impede the development of cost-effective DG Facilities in the NSTAR franchise area.

7. FCE is substantially and specifically affected by the outcome of this proceeding because the tariffs as proposed will impose distribution system costs on projects under development and planned by FCE that are neither just nor reasonable. Instead of reflecting the actual net costs imposed on the system by DG Facilities of the type developed by FCE, the tariffs as proposed will create a cross-subsidy for the benefit of non-DG customers. Under the tariffs as proposed, FCE’s projects would be charged costs well in excess of the actual costs they would impose on the distribution system. This in turn will hinder the deployment of the reliable, ultra-low emission fuel cell technology offered by FCE.

8. FCE is also substantially and specifically affected by this proceeding because the proposed tariffs fail to account for the cost savings to NSTAR from DG Facilities, especially DG Facilities of the type developed by FCE. FCE’s installations minimize the need for certain capital expenditures and maintenance costs for utilities and enhance system reliability. Moreover, the extraordinary degree of operating reliability achieved by fuel cells is not reflected

in the cost calculations supporting NSTAR's proposed tariffs. By taking a "one size fits all approach" to its tariff design, NSTAR is seeking to collect revenues for costs that do not exist and fails to provide credit for savings generated by DG facilities of the type developed by FCE.

9. This barrier to FCE's expansion in NSTAR's franchise area is also significant from a regional reliability perspective. The Greater Boston Import Area is currently underserved by cost-effective generating capacity. Even with existing resources continuing to operate and all planned transmission upgrades coming into service, the Greater Boston Import Area will need additional generation resources. Fuel cells strategically sited in the Greater Boston Import Area can provide part of a long-term answer to meet the demands of load growth over the next decade. The inappropriate price signals which the proposed tariffs would send would hinder the development of fuel cells in this critically underserved Area.

10. FCE is also specifically affected by this proceeding because of the precedent-setting effect the decision in this docket may have on other Massachusetts utilities and on other jurisdictions, as there are relatively few standby rates currently in effect across the nation.

11. FCE's interests cannot be adequately represented by any other party to this proceeding. While DG technologies do have certain characteristics in common, the unique operating and reliability characteristics of FCE's technology, and their implications for tariff design, make FCE's direct participation in this proceeding necessary.

Therefore, FCE respectfully petitions the Department for leave to participate as an intervenor in this proceeding.

Respectfully submitted,

FUELCELL ENERGY, INC.

By its attorneys,

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DATED: February 3, 2004